CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1928

No. 84[redacted] 94

GEORGE VAN CAMP & SONS COMPANY

vs.

AMERICAN CAN COMPANY AND THE VAN CAMP PACKING COMPANY, INC.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FILED MARCH 14, 1929

(33,298)

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SUPREME COURT OF THE UNITED STATES

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No. 846

GEORGE VAN CAMP & SONS COMPANY

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 29, 1928

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

TUESDAY, FEBRUARY 21, 1928

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

No. 3948

GEORGE VAN CAMP & SONS COMPANY

vs.

AMERICAN CAN COMPANY AND THE VAN CAMP PACKING COMPANY, INC.

Appeal from the District Court of the United States for the District of Indiana

STATEMENT OF CASE

On this appeal certain questions of law have arisen concerning which this Court is in doubt, and desires the advice of the Supreme Court.

The relevant facts out of which the legal questions grow are:

Appellant, George Van Camp & Sons Company, filed its bill of complaint in the United States District Court for the District of Indiana, charging appellees with price discrimination, in violation of section 2, chapter 323, of an Act of Congress of October 15, 1914, the so-called "Clayton Act" (United States Code, Title 15, Section 13), and seeking injunction against continuance thereof and other relief.

The bill charges that appellant, George Van Camp & Sons Company, is engaged, interstate, in the business of packing and selling food products in tin cans, and that appellee Van Camp Packing Company is engaged in the same business, and is a competitor of appellant; and that appellee American Can Company manufactures, in very great quantities, and sells, interstate, to food packers, tin cans used in the food packing industry, and owns the monopoly for certain

machines which are necessary for sealing the cans of its manufacture, and that it sells such cans in large quantities to appellant and to appellee Van Camp Packing Company, and leases to them its machines for sealing these cans;

That the American Can Company is unlawfully discriminating between different purchasers of its commodities, in that the price at which it offered and offers and sold and sells its said cans to appellee Van Camp Packing Company is 20% below its publicly announced standard prices and the prices at which it contracted to sell and did and does sell its cans of the same kind to appellant, George Van Camp & Sons Company; that the American Can Company furnishes food packers, including appellant, its machines necessary for sealing its said cans at a fixed rental, and furnishes the same machines to the Van Camp Packing Company free of charge; that the American Can Company paid and pays the Van Camp Packing Company large sums of money by way of bonus, discounts, and reductions from the price of cans fixed in contracts between them, none of such bonus, discounts, or reductions being allowed or paid to appellant; and that these discriminations were and are not made on account of differences in grade, quality, or quantity of the commodity sold, nor of the machines leased, nor on account of any difference in the cost of selling or transportation, nor made in good faith to meet competition;

That the effect of such discrimination is to substantially lessen competition, and tends to create a monopoly in the line of interstate commerce in which the appellant, George Van Camp & Sons Company, and the appellee Van Camp Packing Company are both engaged, namely, the packing and selling of food products in tin cans.

There is no allegation in the bill that the discriminations complained of tended to create a monopoly or substantially lessen competition in the line of commerce in which the appellee American Can Company is engaged.

On separate motions of the several appellees on the ground that said section 2 of the "Clayton Act" is addressed only to discriminations in price the effect of which may be to substantially lessen competition, or tend to create a monopoly in the business in which the discriminator is

engaged, the District Court dismissed the bill for want of equity, and the appeal is from the decree of dismissal.

Questions Certified

The questions concerning which this Court desires advice are:

Question 1. Does section 2 of the "Clayton Act" (United States Code, Title 15, Section 13) have application to cases of price discrimination, the effect of which may be to substantially lessen competition, or tend to create a monopoly, not in the line of commerce wherein the discriminator is engaged, but in the line of commerce in which the vendee of the discriminator is engaged?

Question 2. Where one who makes an article and sells it, interstate, to persons engaged, interstate, in a line of commerce different from that of the maker, discriminates in price between such buyers (said discrimination not being made on account of differences in the grade, quality or quantity of the commodity sold, nor being made as only due allowance for the difference in the cost of selling or transportation, nor being made in good faith to meet competition) and the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in the line of commerce wherein the buyers are engaged, does the maker and seller of the article, making such price discrimination, transgress section 2 of the "Clayton Act" (United States Code, Title 15, Section 13)?

The clerk of this Court is directed to transmit a certified copy hereof to the Supreme Court.

Clerk's Certificate

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 3, inclusive, contain a true copy of the Statement of facts and questions certified to the Supreme Court of the United States, pursuant to order of this

court entered on February 21, 1928, in the case of George Van Camp & Sons Company vs. American Can Company and The Van Camp Packing Company, Inc., No. 3948, October Term, 1927, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 23rd day of February, A. D. 1928.

Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.
(Seal United States Circuit Court of Appeals, Seventh Circuit.)

Endorsed on cover: File No. 33,298. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 846. George Van Camp & Sons Company vs. American Can Company and The Van Camp Packing Company, Inc. (Certificate.) Filed March 16th, 1928. File No. 33,298.